

River Walk Manor, Inc. and District 1199E National Union of Hospital Employees, Petitioner.
Case 5-RC-11986

3 April 1984

**DECISION AND ORDER DIRECTING
HEARING**

**BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on 19 August 1983¹ and the Regional Director's report recommending disposition of them. The Board has reviewed the record in light of the Employer's exceptions and supporting brief and hereby adopts the Regional Director's findings and recommendations except as modified herein.

The Regional Director recommended that the Employer's Objections 1-3, which he treated as one, and Objection 4 be overruled.² The Employer contends that the Regional Director erred in applying the law and that the Regional Director improperly resolved conflicts in testimony. We find merit in the Employer's exceptions and accordingly we shall direct that a hearing be held on Objections 1-3 and 4 for the following reasons.

In *Holladay Corp.*³ we noted that "where an objecting party submits prima facie evidence that an election was not held under the proper laboratory conditions, the Board will not hesitate to commit the necessary investment of time and money to protect its election process." The Employer generally alleged in its Objections 1-3 that supervisors had engaged in extensive prounion campaign activities and threatened employees regarding job security, wages, and benefits. In Objection 4 the Employer alleged that an employee was the victim of threats on her life and that other employees were aware of these threats. We find that the Employer has submitted prima facie evidence to support these objections.

The Regional Director found that in support of Objections 1-3 the Employer had submitted the affidavits of its administrator, executive director, and three employees. These affidavits indicate that charge nurses⁴ Kiser and Purnell spoke on behalf

of the Union at prepetition organizational meetings; that Kiser and other charge nurses distributed authorization cards; that after the petition was filed Kiser continued to urge employees at work to vote for the union; and that Kiser told employees that if they did not vote for the union they would have no job security or wage increases and no additional benefits.⁵

The Regional Director found that in support of Objection 4 the Employer submitted the affidavit of the employee who was allegedly threatened. The employee claims to have received several threats on her life and to have told her fellow employees of these threats. The Employer's administrator states in his affidavit that employees were aware of these threats and that they were certain that damage to their cars was attributable to the Petitioner.

The Regional Director recommended that Objection 1-3 be overruled because the alleged supervisory conduct amounted to no more than an expression of personal preference by a low level supervisor. The Regional Director recommended that Objection 4 be overruled because the Employer did not offer any specific probative evidence linking the Petitioner to the alleged conduct. We disagree.

On 15 September 1981 the Board amended its rules and procedures pertaining to disposition of objections to an election. We have noted that these revisions make clear that "*ex parte* investigations are not to be used to resolve 'substantial and material factual issues' particularly where the factual issues turn on credibility." *Erie Coke & Chemical Co.*, 261 NLRB 25 (1982). In the instant proceeding, the Employer has submitted affidavits to the Regional Director alleging supervisory misconduct and death threats. These affidavits allege with specificity both the objectionable conduct and the persons responsible for it. More critically, the Employer's allegations might well warrant setting aside the election if they are proved. We also note the conflict in testimony between those affidavits obtained by the Board agent and those submitted by the Employer. Contrary to the Regional Director, we are unwilling to determine the accuracy or the effect of these allegations without the benefit of a hearing. Accordingly, we shall remand this proceeding to the Regional Director for him to ar-

¹ The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 52 for and 30 against the Petitioner; there was 1 nondeterminative challenged ballot.

² The Regional Director also recommended that the Employer's Objections 5-8 be overruled. We find no merit in the Employer's exceptions to that recommendation.

³ 266 NLRB 621 (1983).

⁴ The Regional Director found that the employer's charge nurses are supervisors within the meaning of the Act.

⁵ The Board agent investigating the Employer's objections obtained affidavits from certain of the employees whose statements the Employer submitted to corroborate its objections. We note that these affidavits conflict in certain respects from those obtained and submitted by the Employer.

range a hearing on the Employer's Objections 1, 2,⁶ 3, and 4.

ORDER

It is hereby ordered that the above-captioned matter be remanded to the Regional Director for Region 5 for the purpose of conducting a hearing on the Employer's Objections 1, 2, 3, and 4 in ac-

⁶ In ordering a hearing on Objections 2, we do so only insofar as it relates to the issue of supervisory misconduct during the campaign. As our adoption of the Regional Director's recommendation to overrule Objection 6 makes clear, we do not find that the administrative investigation and resolution of the Employer's motion to dismiss petition warrants a hearing. After an extensive investigation the Regional Director determined that there was insufficient evidence to indicate that the Employer's charge nurses, whom he found to be supervisors, were "prime" movers in the solicitation of authorization cards and that there was a sufficient valid showing of interest to proceed with the election. Thus on 14 September 1983 the Board denied the Employer's request for review of the Regional Director's determination.

cordance with the terms of this decision and that the Regional Director is authorized to issue a notice of hearing.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing pursuant to this Order shall prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the objections. Within 10 days from the date of issuance of the report, either party may file with the Board in Washington, D.C., eight copies of exceptions. Immediately upon the filing of the exceptions, the parties filing shall serve a copy on the other party, and shall file a copy with the Regional Director. If no exceptions are filed, the Board will adopt the recommendations of the Hearing Officer.